IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SEVENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 9611 of 2004

Between:

1.The Department of Personnel and Training,

Government of India,
rep. by its Secretary.

2.The Bhabha Atomic Research Centre,

rep. by its Director, Trombay,

Mumbai - 85.

3.The Defence Research Development Organisation,

rep. by its Director General, Defence Head Quarters,
Sena Bhavan, New Delhi.
4 The Defence Metallogical Research Laboratory,

(DMRL), rep. by its Director, Kanchanbagh,
Hyderabad - 500 058.

.... PETITIONERS

AND

Dr. D.R.K. Rao, S/o Late Dr. Ramakrishnaiah,
"F" in DMRL , Hyderabad,

R/o Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari, or any other appropriate writ, order or direction, calling for the records pertaining to O.A.No. 1658 of 2001 dated 14-11-2003 as clarified in C.P.No. 35 of 2004 dated 8-4-2004 on the file of the Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad and quash the same as illegal, arbitrary, contrary to law and unconstitutional and declare the same as void ab initio, null and void and nonest in the eye of law.

For the Petitioners: MR.A.RAJASHEKAR REDDY (SC FOR CG)

For the Respondent : MR.N.RAMAMOHANA RAO, Advocate

The Court made the following :

ORDER: (per GB,J)

This writ petition is filed challenging the order passed by the Hon'ble Central Administrative Tribunal (for short 'the Tribunal') in O.A.No.1658 of 2001, dated 14.11.2003.

2. Originally the unofficial respondent filed O.A.No.1658 of 2001 seeking to set aside the order dated 28-09-2000 of the 4th respondent *viz.,* the Director of the Defence Metallurgical Research Laboratory as arbitrary, illegal and for a declaration that the SRO 11E Rules, dated 10-08-1990 in so far as they are not made applicable to the case of the applicant as illegal and violative of Articles 14 & 16 of the Constitution of India, and for a consequential direction. The Tribunal, after considering the matter elaborately, allowed the above O.A.with the following directions:

i. The impugned order dated 28.09.2000 issued by the 4th respondent is hereby set aside holding that the same is arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India. It is also declared that the benefit of SRO 11-E dated

10.08.1990 is to be extended to the applicant and the action of the respondents in not extending the benefit of the said amended rules is illegal and violative of Articles 14 and 16 of the Constitution of India.

ii. The Respondents are directed to consider the period between 1.8.1983 and 30.6.1985 for the purpose of residency period in DMRL and on that basis, to review the promotions ordered earlier by assigning the notional dates of promotion to applicant in the grade of Scientist-D, Scientist-E and Scientist-F and grant all consequential benefits upon such review.

iii. The respondents are further directed to consider the case of the applicant for promotion to the grade of Scientist-G along with others when the Peer Committee next meets for the said purpose.

iv. The respondents are directed to comply with this order within a period of 3 (three) months from the date of receipt of a copy of this order.

In the peculiar circumstances of the case, we direct the parties to bear their respective costs.

When the order of the Tribunal was not implemented, the unofficial respondent filed contempt case alleging violation of the orders of the Tribunal. The Tribunal passed an order in the Contempt Petition No.35 of 2004 directing them to implement the order passed by it. However, they have clarified in the order so as to enable the parties to implement the same. The said clarification reads thus:

"According to the orders passed by this Tribunal, physical presence of the applicant is not required for review of the promotions ordered earlier in the grades of Scientists-D, E and F. Only in respect of Grade-G Scientist, the respondents are entitled to follow the rules for consideration of the case of the applicant for promotion. For the other grades of Scientists D, E and F, the residency period from 1.8.1983 to 30.6.1985 is to be added to the residency period for grant of notional promotion as directed by this Tribunal in the orders passed. Hence, the respondents are directed to comply with the orders passed in the light

of the above clarification issued, before the end of May, 2004."

Aggrieved by the said order in the Contempt Application, the present writ petition has been filed.

3. The learned standing counsel for the Central Government submits that the order of the Tribunal clarifying the earlier order is illegal, arbitrary, contrary to law and without jurisdiction. He further submits that the Tribunal has no jurisdiction to clarify the order already passed by it and the clarification would be nothing but review of the earlier order. But in the instant contempt case, the Tribunal has clarified the matter and therefore it is liable to be set aside.

4. Learned counsel for the unofficial respondent,
Sri N. Ram Mohan Rao, submits that what was clarified is the direction issued by the Tribunal in its earlier order and it is not clarified, which is not contained in the original order and therefore the clarification issued by the Tribunal is only to enable the authorities to comply with the orders and no fresh directions *de hors* the orders already passed, and therefore the same is legal and valid.

5. We have heard the learned counsel for the parties at length.

6. It is true that the Tribunal has clarified the matter and directed the authorities to implement its order passed earlier. The question that falls for consideration is whether the clarification is contrary to the directions issued in the original order dated 14-11-2003.

7. Inasmuch as there is no variation in the order passed earlier and in the Contempt Application, it cannot be said that the Tribunal has exceeded its jurisdiction by passing the clarificatory order. Thus, we do not find any infirmity in the order passed by the Tribunal.

8. Accordingly, the Writ Petition is dismissed. However, six weeks time is granted from today for implementing the order of the Tribunal. No order as to costs.

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G.BIKSHAPATHY, J

Dated: 07.07.2004

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B.SESHASAYANA REDDY, J

LSK

One fair copy to the Hon'ble Sri Justice G.Bikshapathy (for his Lordship's kind perusal)

To

1.The Department of Personnel and Training,

Government of India,
rep. by its Secretary.

2.The Bhabha Atomic Research Centre,

rep. by its Director, Trombay,

Mumbai - 85.

3.The Defence Research Development Organisation,

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Sena Bhavan, New Delhi.

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5. Two C.D.Copies.

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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Dated: 07.07.2004